

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 11, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09HD-085
Ref. No.: RPS-7315

HAWAII

Cancellation of Revocable Permit No. S-7315; Re-issuance of new Revocable Permit to Gary L. Davis, for pasture purposes at Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-6-001: 5, 9 & 11.

APPLICANT:

Gary L. Davis, married, Tenant in Severalty.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: 3rd/ 6-6-001: 5, 9 & 11, as shown on the attached map labeled Exhibit A.

AREA:

Parcel 5: 2.135 acres
Parcel 9: 1.120 acres
Parcel 11: 1.872 acres (after withdrawal of .458 acres for set aside to DHHL.)
Total: 5.127 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO
 X

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7315, Gary L. Davis, Permittee, for pasture purposes.

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$40.00 per month, based on staff appraisal dated August 13, 2009, attached as **Exhibit B**.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states " Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable, applicant is an individual/ sole proprietor, therefore, is not required to register with DCCA.

REMARKS:

At its meeting of February 8, 2002, Item D-1, the Board of Land and Natural Resources approved the issuance of a revocable permit to Gary L. Davis for pasture purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-6-01: 5, 9 and 11.

At its meeting of May 11, 2007, Item D-6, the Land Board approved a right-of-entry permit to the Department of Hawaiian Home Lands (DHHL) to conduct topographical/geotechnical surveys for feasibility study and design for its proposed water tank site.

By memorandum dated December 11, 2009, Kaulana H. R. Park, Chairman of the Hawaiian Homes Commission, requested a set aside to the Department of Hawaiian Home Lands over a portion of TMK (3) 6-6-01:11 for purposes of a reservoir site. The proposed off-site water system improvement, which includes a new 0.5 MG reservoir, will service DHHL's proposed Lalamilo Residence Lots, Phase II subdivision. The proposed tank site would be constructed by DHHL, and then dedicated to the Water Board of the County of Hawaii upon completion. To accomplish the above, an area of .458 acres will be subdivided out from parcel 11. A letter of concurrence from Gary L. Davis, Permittee under Revocable Permit No. S-7315, agreeing to the partial withdrawal of lands from the permit area is on file. DHHL has agreed to compensate Gary Davis for any and all damages or expenses relating to the replacement, repair or relocation of improvements caused by the withdrawal and set-aside of the reservoir site to DHHL. The improvements may include but are not limited to stock-proof fencing, a water meter, and water pipelines. DHHL also agreed to pay the document fees incurred by Mr. Davis in the issuance of a new revocable permit for the lands remaining after the withdrawal and set-aside of the .458 acres for the reservoir site. DHHL shall not be responsible for paying any increase or difference in rents charged to Mr. Davis in the issuance of a new revocable permit.

Staff is recommending the cancellation of Revocable Permit No. S-7315 and the re-issuance of a new revocable permit to Gary L. Davis, reflecting a reduction of land with a recalculation of rents under the new permit.

Ironically, although the total permit area will be lessened by .458 acres, the monthly rent on the new revocable permit to Mr. Davis will reflect an increase from \$13 per month to \$40 per month. The increase is due to the establishment of the Department's minimum rent policy approved by the Board of Land and Natural Resources at its meeting of May 13, 2005, which sets the minimum rent at \$480 per year (or \$40 per month).

Although the surrounding properties are zoned for agriculture and are in pasture use, the current county and state zoning is designated residential/urban. In the prior revocable permit, the county noted that the nearest residences are also in the Agricultural district and as a result, the county would not object to a month-to-month lease of the subject parcel for pasture use. However, should the County Planning Department receive any complaints related to the pasture use, they will have to enforce the zoning code and demand termination of the pasture lease.

Gary L. Davis has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Gary L. Davis qualifies as a bona fide cattle rancher as he was previously a part owner of Five-O Cattle Co., LLC, a 560-acre ranch that has been engaged in the cattle business on the Big Island since 1997. The company specialized in weaned calves and grass-fed steers.

A month-to-month tenancy is more appropriate than a long-termed disposition because of the potential for higher and better use of the parcel due to its zoning and location.

On January 4, 2010, various governmental agencies and interest groups were solicited for comments. All respondents did not have any comments or objections to the request.

AGENCIES	COMMENTS
County of Hawaii	
Planning Department	See comments
Public Works	No comments
Department of Water Supply	No objections
State of Hawaii	
DLNR-Historic Preservation	No objections
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No comments

The County Department of Planning Department has no objections to the request, but provided the following comments. The subject State property is in the RS zoning district. Raising livestock is not a permitted use in this zoning district. However, given that the surrounding parcels are zoned Agriculture, that adjacent parcels are in pasture use, and that the nearest residences are in the Agricultural district, we will not object to a month-to-month lease of the subject parcel for pasture use. However, if we receive any complaints related to the pasture use, we will have to strictly enforce the zoning code and demand a termination of the lease.


RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the termination of Revocable Permit No. S-7315 to Gary L. Davis.
3. Authorize the issuance of a new revocable permit to Gary L. Davis covering the subject area for pasture purposes under the terms and conditions cited above,

which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. The Department of Hawaiian Home Lands is responsible for the document fee required relating to the re-issuance of a new revocable permit to Gary L. Davis;
- c. The Department of Hawaiian Home Lands shall be responsible for relocating the water meter and pipelines servicing the State property that traverses the lands being withdrawn;
- d. The Department of Hawaiian Home Lands shall be responsible for relocating, repairing, replacing the stock-proof fencing affected by the withdrawal of lands for the set aside;
- e. Review and approval by the Department of the Attorney General; and
- f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





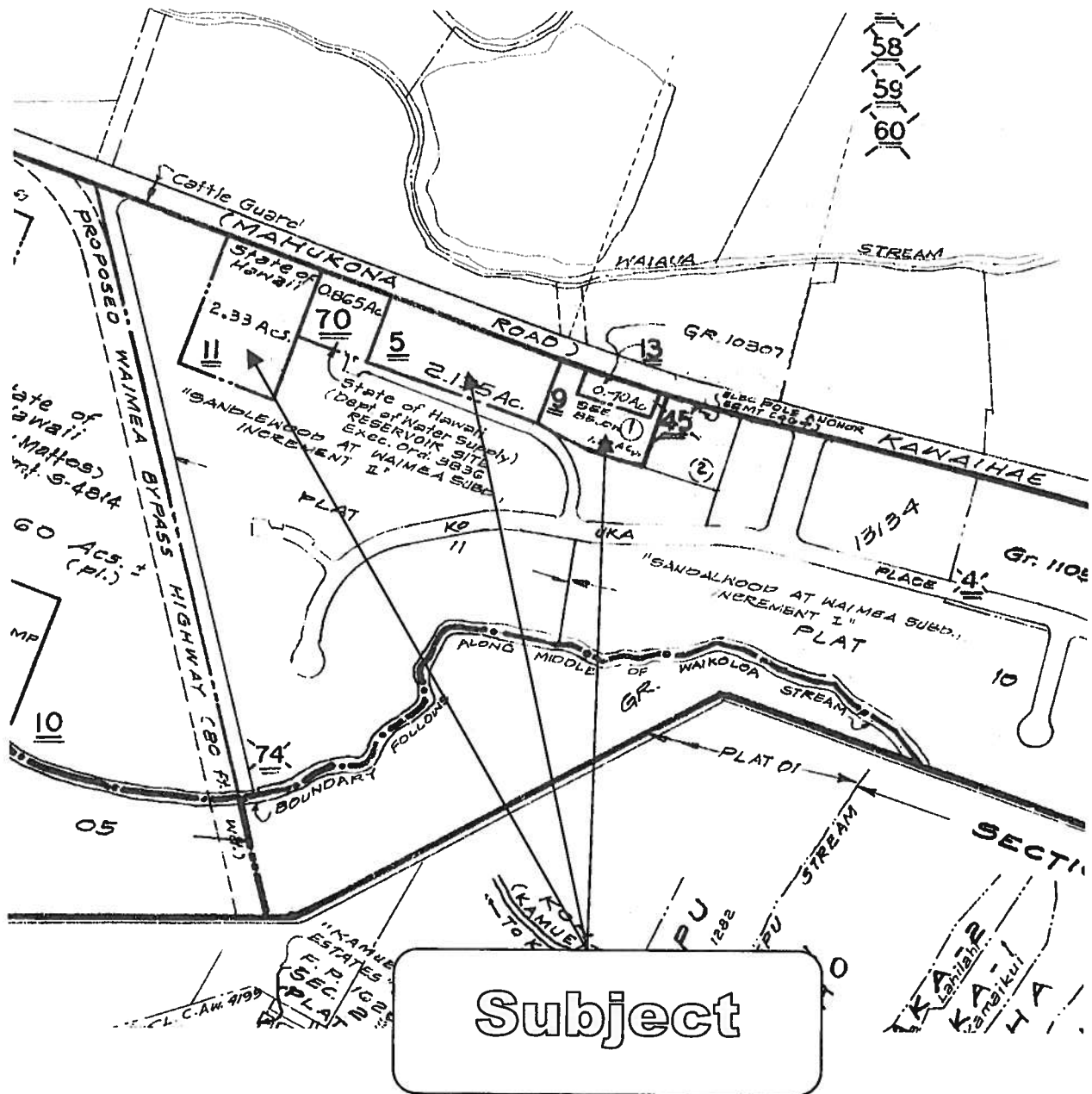


EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 13, 2009

2009 AUG 24 P 1:07

RECEIVED
LAND DIVISION
HAWAII

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: *for* Morris M. Atta, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Revocable Permit for Pasture Purposes

PSF No.: 09HD-085
Applicant: Gary L. Davis
Location: Lalamilo, South Kohala, Hawaii
Land Area: 5.127 acres
Tax Map Key: (3) 6-6-01: 5, 9 & 11
Char. of Use: Pasture

We have been requested to provide a monthly rent amount for the issuance of a revocable permit for pasture purposes on the above-referenced property. This rent amount will be included in staff's submittal to the Board for approval of this permit and will not be effective unless such approval is received. The permittee currently uses the area for pasture purposes under RP S-7315 issued in 2002 at a rent of \$13 per month. The County of Hawaii has requested a partial withdrawal of 0.458 acres from the permit area for a set aside for a proposed reservoir site. The permittee currently uses 5.585 acres and the withdrawal would reduce the area to 5.127 acres. The permittee would have his current RP cancelled and issued a new one.

The current permit rent was determined by staff in 2001 using the animal unit carrying capacity method. The subject is rated class "b" for grazing which allows for 2.5 to 5 acres per animal unit. Based on an animal production formula for the subject acreage, we calculated the monthly rent using a 2 AU capacity:

Pasture Details	Usable Acreage	Capacity ¹	AUY
	5.127 ac. divided by 2.5 ac./cow	=	2
Average weight gain per animal per year in lbs.		x	300
Annual weight gain in lbs.			600

EXHIBIT B

Average live weight price (3-yr. average) ²	x	\$0.79
Gross value of beef		\$474
Portion of gross profit to Lessor	x	25%
Gross annual rent		\$118.50
Monthly rent		\$9.88
Recommended Monthly Rent (Minimum)		\$40

¹ Carrying capacity referenced in prior appraisal.

² Average live weight price (cents per pound) for Big Island derived from the *Statistics of Hawaiian Agriculture* average for the period 2005 to 2007, the most recent data available.

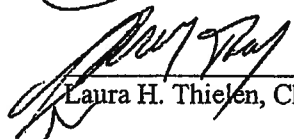
Year	Statewide	Big Island
2005	\$0.753	\$0.799
2006	\$0.767	\$0.795
2007	<u>\$0.724</u>	<u>\$0.760</u>
Average (rounded)	\$0.748	\$0.785

Therefore, as of August 1, 2009, the monthly market rent for the revocable permit to the applicant is recommended to be \$40 per month.

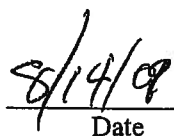
Special Assumptions and Limiting Conditions

- 1) This document does not take the place of an appraisal and does not constitute an appraisal, which adheres to the Uniform Standards of Professional Appraisal Practice.
- 2) The subject property was not inspected by the staff appraiser.

Approved/Disapproved:



Laura H. Thielen, Chairperson



Date

cc: District Branch Files
Central Files

EXHIBIT B